U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: EAC 03 028 52244 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a researcher in molecular biology. At the time of filing, the petitioner was a postdoctoral researcher at Cornell University. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

In a letter submitted with the initial filing, counsel states that the petitioner "is responsible for a radical breakthrough in the understanding of the transcription process of the HIV virus, and has made significant headway into the understanding of inherited diseases and the use of gene therapy to combat the adverse effects of inherited diseases." Counsel contends that the petitioner "had pioneered research that had changed the entire field of molecular biology's view of the transcription of HIV."

[redacted]irector of research at the *Ecole Normale Supérieure* in Paris, supervised the petitioner's research at that institution. He states that the petitioner "has made an extremely original pioneering contribution to the transcription research field. She found a new mechanism involved in HIV transcription." [redacted] an associate professor who oversaw the beneficiary's postdoctoral work at the University of Rochester Medical Center, states: "Our current understanding of the activation of the HIV-1 promoter gene owes much to the work of" the beneficiary. The petitioner worked with HIV as a graduate student in France, but her subsequent work has not involved HIV.

[redacted]nstitute for Animal Health at Cornell University's College of Veterinary Medicine has "worked closely with [the petitioner] since February, 2002." He states that the petitioner's "research focuses on the gene expression pattern that characterizes the sick and dying photoreceptor cells. . . . I feel that [the petitioner's] efforts and contributions have had a substantial impact on her colleagues and field of endeavor at the national and international level." Others who have collaborated with the petitioner offer similar endorsements, and observe that the petitioner's work has appeared in major scholarly journals.

To establish the impact of these published articles, the petitioner submits copies of two articles that cite her work. (Counsel states that there are three such articles, but the record contains only two.) One of these is a self-citation [redacted] who collaborated with the petitioner on the cited article.

The director denied the petition, observing that all of the witnesses are the petitioner's collaborators, mentors, and/or acquaintances, and that the petitioner had documented only a minimal citation record for her published work. Therefore, the director concluded, the petitioner had not established that her work has had a significant impact beyond the research groups where she has worked. The director also concluded that the petitioner has not shown that her work is national in scope.

On appeal, counsel states that the director erred by failing to issue a request for evidence pursuant to 8 C.F.R. § 103.2(b)(8). Counsel correctly asserts that such a notice is required when the petitioner has submitted insufficient evidence of eligibility, and the record contains no evidence of ineligibility. The most expedient remedy for this shortcoming is to consider, on appeal, whatever evidence the petitioner would have submitted in response to such a notice had the director issued one.

We concur with counsel's assertion that the director erred in finding that the petitioner's work is not national in scope. The petitioner conducts scientific research and publishes the results of such research in nationally or internationally circulated journals. There is nothing inherently local about the petitioner's work.

With respect to the originally submitted witness letters, counsel states: "While some of the letters were from scientists with whom [the petitioner] has worked, others were from scientists who simply are familiar with her work." Counsel fails to identify any witness who falls into the latter category. Our review of the record indicates that every one of the witnesses has interacted with the petitioner either as her supervisor or collaborator, or as a fellow researcher at one of the institutions where she has worked. Counsel notes that one witness [redacted] of the University of California, Davis, "collaborated with [the petitioner] on a limited basis. He is not a collaborator or co-author on any of her publications." [redacted] never describes his collaboration with the petitioner as "limited." Rather, he states that he "collaborated with [the petitioner] on several projects" in 1997 and again in 1999. He does not indicate that he was already aware of the petitioner by reputation when he began this collaboration. Counsel fails to provide a persuasive explanation as to why this individual who "collaborated with [the petitioner] on several projects" is not one of the petitioner's collaborators.

Counsel states tha[redacted] Cornell University "knows of [the petitioner's] work only because she applied to his laboratory to do postdoctoral research." Given that the petitioner works at Cornell University, this assertion appears to be dubious. [redacted] did not hire the petitioner for the position; she obtained her position at Cornell via a separate application to work in another laboratory.

Counsel is correct to argue that a petition should not automatically be denied simply because all of the witnesses have some connection to the alien. That being said, we must consider the extent to which the record objectively supports the claims that the witnesses make on the alien's behalf. When several of the petitioner's collaborators assert that the petitioner's work has had significant influence *throughout the field*, as is the case here, then it is entirely reasonable to expect there to be corroborating evidence that represents a cross-section of the field. If there is no evidence to show this influence outside the petitioner's own circle of collaborators and supervisors, then we are not obliged to give substantial credence to claims regarding such influence.

Counsel cites an unpublished AAO decision in which "[t]he only evidence discussed by the AAO were [sic] the several letters of support submitted. The AAO found these letters to be persuasive because the letters came from experts at the top of the petitioner's field, were specific about the petitioner's contributions, and stressed the impact of the petitioner's discoveries." Counsel then submits copies of four different AAO decisions, and therefore it is not clear which article is the subject of comparison. (Counsel states that the cited decision is dated January 9, 2004; but two of the decisions show that date, and on the other two, the date is illegible; therefore, identifying the cited decision only by date is of no value.) In one decision, the AAO discussed the witness letters and then stated: "Other materials in the record [i.e., materials other than letters] support the contention that the petitioner is well known . . . as a highly regarded expert in his field." The alien in that case also held "leadership roles in national and international organizations." In contrast, the petitioner

in the instant case has worked only as a graduate student and as a postdoctoral researcher, which is the lowest non-student rung on the academic research hierarchy.

The second submitted decision mentions a letter from an independent witness who is a member of the National Academy of Sciences. The decision also noted specific projects in which the alien's work had been implemented (as opposed to vague and general attestations of "impact" or "influence"). In the third submitted decision, the AAO found "the petitioner has earned a significant reputation outside of his immediate circle of mentors and collaborators, and that established experts in the field consider his work to be highly significant in establishing a theoretical framework upon which to build." The fourth case includes the observation that the petitioner had submitted "an independent letter and objective evidence," and that the petitioner's published work had "a consistent pattern of recognition in the research community." Counsel fails to demonstrate significant similarities between any of the four decisions and the present matter.

Counsel argues that the director "ignored objective evidence of the importance of [the petitioner's] work." The published articles and conference presentations by the petitioner show that the petitioner has been productive, but these articles and presentations do not, by the mere fact of their existence, show that the petitioner's work has been of unusual importance within the field. A fundamental purpose of scientific research is to obtain new information for dissemination to others in the field, and publication and presentation are the two chief means by which this dissemination occurs. As we have already observed, the original submission established only two citations of the petitioner's work, one of which was a self-citation by a co-author. One independent citation does not demonstrate that the petitioner's work has attracted unusual notice among researchers other than the petitioner's mentors and collaborators.

On appeal, the petitioner demonstrates additional independent citations of her work. Because these citations were never brought to the director's attention prior to the denial, the director did not "ignore" this evidence; it simply was not there to consider. The director's lack of awareness of evidence that the petitioner did not submit cannot reasonably be construed as error. The newly submitted evidence shows moderate citation of two of the petitioner's articles, relating to an avenue of inquiry that the petitioner appears no longer to be pursuing (having left HIV research to study genetic roots lung cancer and, subsequently, canine blindness). The record does not establish even this moderate level of impact for anything that the petitioner has done since she finished her graduate studies. Thus, the record does not establish a consistent pattern of research work that has attracted significant notice within the field. It simply cannot suffice for a succession of collaborators and former supervisors to discuss the petitioner's "immense influence" within the field without providing some objective means to verify that influence.

Counsel also observes that [redacted] one of the petitioner's former supervisors, has cited the petitioner's past work in an article published in the top journal *Nature*. The petitioner was not involved in this article, any more than the hundred or so other researchers whose work is also cited in that same article. If we are to give the petitioner credit for articles she did not write, then logically we must also attribute the petitioner's own articles to the great number of researchers whose work is cited in those articles.

Counsel states that the director "applied an incorrect standard from *Matter of New York State Dept. of Transportation* . . . in requiring that the record 'demonstrate that the beneficiary's achievements and skills are indicative of a prospective national benefit significantly greater than from an alien of exceptional ability.'" This is not an incorrect standard; it appears at pages 216-217 of the precedent decision, which in turn quotes from supplementary information published with CIS regulations in 1991. (The relevant quotation from the supplementary information appears elsewhere in this decision.) The reasoning is that an alien of exceptional ability must, by statute, offer a substantial prospective benefit to the United States. Even then, such an alien

is not, by virtue of his or her exceptional ability, automatically exempt from the job offer requirement. Therefore, the alien must offer a substantial prospective benefit that is greater than the benefit inherent in the alien's exceptional ability. Because Congress never stated that a member of the professions holding an advanced degree is entitled to a lower standard for a waiver than an alien of exceptional ability is, it necessarily follows that every alien seeking a waiver must offer a substantial prospective benefit greater than what is usually demonstrated by an alien of exceptional ability.[1]

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

[1] There exists a limited exception for certain physicians, set forth at section 203(b)(2)(B)(ii) of the Act, which is not relevant to the present discussion.